PUBLICITY OF ELECTION EXPENDITURES.

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I.

THE total sum at the command of the Democratic National Committee in the Buchanan campaign was less than $25,000. The amount expended by the Republican National Committee during the Lincoln campaign of 1860 was a little over $100,000. The enormously increased campaign expenditures during several of the recent Presidential campaigns are to be estimated in millions.

Does the contrast imply a corresponding increase of votes bought? Does the change mean that corporations have been brought into politics by assaults on the currency and on vested rights? Does it mean that money protects money, or that the war-chest of protection is inexhaustible? Does it indicate that the destinies of the country are to be regulated by combined interests?

If a remedy is to be applied, should it be by new laws, or by party organizations reforming themselves? Should the new laws be federal? Should corporations, should trades-unions, be permitted to give money in elections? Ought the people to know how much money is devoted to the defeat of a candidate, or policy, or party? Will publicity promote or impede such efforts? Would it not, if required under effective penalties, increase the efficiency of existing laws?

II.

Only well-instructed public opinion can correctly answer such questions. Party leaders in intimate touch with the conduct of political campaigns appreciate the intolerable burdens and growing evils of present conditions. Those who have contributed to campaign funds, and who have been closely identified with the

more important corporate and political activities, are among the most earnest advocates of measures tending to restrain such contributions, especially on the part of corporations. Those who represent interests of stockholders, or who are themselves stockholders, in corporations have perhaps most keenly recognized the menace of such increasing exactions. It is true that nothing need be added to the present legal rights of the stockholder, a single stockholder having already a complete right of action in case of expenditure of any portion of corporate funds for political purposes. Owing in part to the present difficulties of obtaining necessary information, individual stockholders have rarely been disposed to vindicate their rights. The enforcement of publicity by Federal and State laws will assist in bringing stockholders' suits.

Those who best know the danger lead in pointing out the practical avenues of escape. Unlike almost all other reform movements, this one has its origin among politicians. It starts in the very centre of politics. Usually, the reformer encounters objections arising out of the experience of those charged with party responsibilities.

Jackson, Democrat of Democrats, in his contest with the Bank of the United States, first recognized as an issue the threatened domination of national politics by corporate influences, and conquered, in what Professor Sumner in his Life of Jackson calls "one of the greatest struggles between democracy and the money power." The elements of that historic controversy seem now to be gathering for renewed conflict, but it is idle to attempt to identify the present movement, essentially non-partisan in its nature and national in its extent, with either of the great political parties.

Close upon the heels of the Presidential campaign of 1892, in which, it is known, millions were expended on both sides, Mr. Root, speaking in the New York Constitutional Convention of 1894, in reference to the proposed incorporation into the State Constitution of an amendment relative to Corrupt Practices, said (Revised Record, Vol. III, page 877):

"The object of this provision is to . . . require the Legislature to say what money may be used to procure the election of a candidate. Until that is done, there is absolutely no limit to the corruption, no limit to the purchase of votes, no limit to the improper influence of votes, or of parties, or of party men. . . .

"That is a very small step in the direction of the Corrupt Practices Act in force in England, which has worked such admirable results. . . . If you enumerate the ways in which money may be used, . . . and then confine candidates for office, party committees, party agents, the agents of candidates, to those uses, and, as a penalty for any knowing departure from those limitations, forfeit the office, you will have a very different state of affairs in respect to what . . . has become one of the great and crying evils of our politics. . . . The use of money has come to such a pass at the hands of both of the great political parties in this country that we find enormous contributions necessary to maintain party machinery, to conduct party warfare, and the effect is that great moneyed interests, corporate and personal, are exerting yearly more and more undue influence in political affairs, . . . and political parties are every year contracting greater debts to the men who can furnish the money to perform the necessary functions of party warfare."

The amendment reported from the Judiciary Committee was as follows:

"Article 2 is hereby amended by adding the following sections:

"Sec. 6. The Legislature shall, by general laws, declare the uses which may be lawfully made of money or other valuable things by, or on behalf of, any person, to promote his nomination as a candidate for public office, and by or on behalf of a candidate to promote his election.

"The use or promise of money or other valuable thing to promote the nomination for, or election to, public office of any person otherwise than is expressly authorized by law, is prohibited, and the person by whom or for whose benefit, with his consent, connivance or procurement, the same is so used or promised, if elected, shall forfeit his office.

"Sec. 7. No corporation shall directly or indirectly use any of its money or property for, or in aid of, any political party or organization, or for, or in aid of, any candidate for political office or for nomination for such office, or in any manner use any of its money or property for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used."

The third reading of the amendment was ordered by a vote of 72 to 21, but it did not pass, mainly because, power being already lodged in the Legislature, it was unnecessary to incorporate in the Constitution of the State what was practically a statute.

Mr. Root, referring to the proposed restriction of corporate contributions, said:

"I think some qualification would have to be inserted, otherwise the general language would apply to such corporations as those which publish newspapers. . . . The idea is to prevent . . . the great railroad com-

panies, the great insurance companies, the great telephone companies, the great aggregations of wealth, from using their corporate funds, directly or indirectly, to send members of the Legislature to these halls in order to vote for their protection and the advancement of their interests as against those of the public. It strikes at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our government. And I believe that the time has come when something ought to be done to put a check to the giving of $50,000 or $100,000 by a great corporation toward political purposes, upon the understanding that a debt is created from a political party to it. . . . I apprehend that many corporations, which are now called upon before every election to contribute large sums of money to campaign funds, would find in an absolute prohibition, with the penalty of the forfeiture of their charters, a reason why they should not make such contributions. I think it will be a protection to corporations and to candidates against demands upon them, and a protection to the people against the payment of consideration for contributions by them, to the injury of the representation of the people. It is, I repeat, because of the difficulty of proving and punishing the crime of buying votes that some other measures seem to be desirable" (p. 897).

President Jackson, in a communication to his cabinet in 1833 condemning the use of the funds of the Bank in its attempt to secure a renewal of its charter, said:

"Having taken these preliminary steps to obtain control over public opinion, the Bank came into Congress and asked a new charter. The object avowed by many of the advocates of the Bank was to *put the President to the test,* that the country might know his final determination relative to the Bank prior to the ensuing election. Many documents and articles were printed and circulated at the expense of the Bank to bring the people to a favorable decision upon its pretensions. Those whom the Bank appears to have made its debtors for the special occasion were warned of the ruin which awaited them should the President be sustained, and attempts were made to alarm the whole people by painting the depression in the price of property and produce and the general loss, inconvenience and distress which it was represented would immediately follow the reelection of the President in opposition to the Bank."—"Messages and Papers of the Presidents," Vol. III, p. 6.

The president of the Bank was, by resolution of its directors, "authorized to cause to be prepared and circulated such documents and papers as may communicate to the people information in regard to the nature and operations of the bank." The expenditures purporting to have been made under the authority

of such resolution were about $80,000, including the purchase of some 100,000 copies of newspapers, reports and speeches made in Congress. The government directors of the Bank having called for a specific account of these expenditures, the board renewed the power already conferred and, by resolution, authorized its president "to continue his exertions for the promotion of said object." Referring to this propaganda, Jackson said in the message above quoted:

"The Bank is thus converted into a vast electioneering engine. . . .

"And the money which belongs to the stockholders and to the public has been freely applied in efforts to degrade in public estimation those who were supposed to be instrumental in resisting the wishes of this grasping and dangerous institution.

"The refusal to render an account of the manner in which a part of the money expended has been applied gives just cause for the suspicion that it has been used for purposes which it is not deemed prudent to expose to the eyes of an intelligent and virtuous people. Those who act justly do not shun the light, nor do they refuse explanations when the propriety of their conduct is brought into question."

In his fifth annual message, Jackson said:

"The question is distinctly presented, whether the people of the United States are to govern through representatives chosen by their unbiassed suffrages, or whether the money and power of a great corporation are to be secretly exerted to influence their judgment and control their decisions. It must now be determined whether the Bank shall have its candidates for all offices in the country, from the highest to the lowest, or whether candidates on both sides of political questions shall be brought forward as heretofore and supported by the usual means."

Again the relation of the money of corporations to party organizations and the ballot has become an issue, but we now approach it in a more tolerant spirit than that animating the contentions of an earlier period. In the recent Presidential campaign, it awakened a recognition by both the leading candidates of its extent and of its consequent dangers. The necessity for remedial legislation has since found expression in the following recommendations of the President's message:

"The power of the Government to protect the integrity of the elections of its own officials is inherent, and has been recognized and affirmed by repeated declarations of the Supreme Court. There is no enemy of free government more dangerous and none so insidious as the corruption of the electorate. No one defends or excuses corruption, and it would seem to fol-

low that none would oppose vigorous measures to eradicate it. I recommend the enactment of a law directed against bribery and corruption in Federal elections. The details of such a law may be safely left to the wise discretion of the Congress, but it should go as far as under the Constitution it is possible to go, and should include severe penalties against him who gives or receives a bribe intended to influence his act or opinion as an elector; and provision for the publication, not only of the expenditures for nominations and elections of all candidates, *but also of all contributions received and expenditures made by political committees.*"

III.

Therefore, upon the highest and best authority, it is evident that something should be done. Facts are more persuasive in an appeal to public opinion than the most powerful argument, especially upon a subject about which almost every one has views, more or less well founded.

American patriotism is a living reality, and finds expression during national Presidential elections. However great the prosperity of the United States, sentiment and ideals are in the end the most controlling forces. There is on that account a good deal of sensitiveness in regard to our electoral practices rather than to our electoral system, but the resulting criticism is a healthy one and does not mean, to those who understand it, that politics in America are more corrupt or less inspiring than in other countries; but it does mean that the American people insist that their politics shall be less corrupt and more inspiring. Conditions here prevailing demand that we seek in our own historical experience guidance to determine the way to further effectual progress. The principle at the foundation of American political institutions is essentially that of individualism and self-direction.

IV.

To guide us in the solution of the problem, there are abundant legislative precedents. Fifteen States have, since 1890, adopted so-called " Corrupt Practices Acts " to restrain and limit rapidly increasing campaign contributions and expenditures.

The first of these laws was enacted in New York in 1890. It defined such practices in some detail, but was very ineffective, requiring merely reports of the expenditures of candidates, there being no regulation or limitation concerning expenditures by political committees.

The Corrupt Practices laws passed in the following year by Colorado (Laws 1891, p. 167) and Michigan (Laws 1891, Chap. 190) followed very closely the New York Act in its definition of corrupt practices, adding a requirement that *party committees must also report all receipts and expenditures for campaign purposes.*

In 1892, Michigan enacted a much more elaborate statute, making provision not only that campaign committees should *report their receipts and expenditures,* and regulating the details of the accounts of such committees, but that *all expenditures on behalf of candidates,* with few exceptions, must be *made through the party committees.* Proper provisions were also made for the enforcement of the act.

This law went further in the direction of the English Corrupt Practices Act of 1883 than any of the other statutes above mentioned. Owing to conditions incident to our political system, and particularly in view of the number of candidates voted for at the same time and upon the same ticket, it is impossible to follow closely the English law.

The Massachusetts law, which went into effect on August 1st, 1892, is entitled, "An act to prevent corrupt practices at elections, and to provide *for publicity in election expenses.*"

It permitted a candidate to spend, without restriction except as to certain personal expenses, any sum of money to secure his nomination or election, provided that the expenditures be effected through a political committee.

The Massachusetts law defines political committees as including "every committee or combination of three or more persons who shall aid or promote the success or defeat of a political party or principle in a public election, or shall aid or take part in the nomination, election or defeat of a candidate for public office." It further provides that every individual who, "otherwise than under the authority and in behalf of a political committee, receives or disburses money for any of the above-named purposes, shall be subject to the requirements of the act, the same as a political committee or its treasurer." Every such committee is required to have a treasurer, who must, within thirty days after an election, if the total receipts or expenditures of the committee exceed twenty dollars, file a sworn statement, "*setting forth all the receipts, expenditures, disbursements and liabilities of the*

committee and of every officer or other person acting under its authority and in its behalf." The vouchers must state the particulars of expense in respect to every payment over five dollars. Expenditures for certain objects, specified in the Act, such as stationery, postage, telegrams and other similar expenses personally incurred by a candidate need not be included in his statement.

The effect of this law is to secure almost complete *publicity and public record in respect to expenditures for the nomination and election of candidates.* Political committees are forbidden to solicit contribution from candidates, who, however, may "make a voluntary payment of money . . . for the promotion of the principles of the party which the committee represents, and for the general purposes of the committee." This provision is directed against the practice of political assessments.

A violation of the provisions of the law is punishable by a fine not exceeding $1,000, and in certain cases with the alternative of imprisonment for not more than one year. Any person, upon the petition of any candidate voted for, or of any five qualified voters, may be compelled to file a correct and proper statement by the courts.

In the year following the passage of the Massachusetts law, the Legislatures of California (Laws 1893, Chap. II) and Missouri (Laws 1893, p. 157) passed corrupt practices laws, which went a step in advance of the Massachusetts statute. In California, the expenditures by or for a candidate were limited; and by the Missouri law a maximum was placed upon the total expenditure of a candidate directly or through committees. The California law was prepared with special care, and is more detailed in its provisions than that of perhaps any other State. In both Missouri and California, and in Kansas, reports of both candidates and committees are required.

The Kansas statute (Laws 1893, Chap. 777, repealed 1903) was very similar to that of Missouri, with the exception that there was no restriction upon the maximum amount of expenditure permitted. The extension of this class of legislation from 1892 to 1895 was very rapid. In the latter year, six States, in addition to the seven already mentioned, adopted legislation requiring publicity in respect to campaign expenses. The Arizona law (Laws 1895, Chap. 20) and that of North Carolina (Laws 1895, Chap.

157) were not so advanced in their provisions as the Missouri law, resembling rather the comparatively ineffective New York law. The Arizona statute, however, contains a provision similar to that of Colorado, requiring that party committees as well as candidates shall report campaign receipts and expenses.

A law passed in Kentucky (Chap. 338) retained the general features of the Massachusetts law, but omitted much of the detail to be found in the latter act.

Nevada (Laws 1895, Chap. 103) copied the California law, with slight changes in respect to the maximum of expenditures permitted, which was somewhat lower. This statute, however, has been since repealed (Laws 1899, Chap. 103).

The Michigan statute, which has been referred to as comparatively deficient and ineffective, was repealed in 1901 (Chap. 61).

The Montana law passed in 1895 (Penal Code 1895, Sec. 80 ff) follows the Massachusetts law, but imposes limitations upon the personal expenses and upon the contributions of candidates.

The Minnesota law of that year (Laws 1895, Chap. 277), which in substance follows the Missouri statute, was in one respect the most complete that had been adopted at that time. The following very detailed definition of legitimate expenses following the practice of the English act was made:

"1. For the personal travelling expenses of the candidate.

"2. For the rent of hall or rooms for the delivery of speeches relative to principles or candidates in any pending election, and for the renting of chairs and other furniture properly necessary to fit such halls or rooms for use for such purposes.

"3. For the payment of public speakers and musicians at public meetings, and their necessary travelling expenses.

"4. Printing and distribution of lists of candidates or sample tickets, speeches or addresses, by pamphlets, newspapers or circulars relative to candidates or political issues, cards, handbills, posters or announcements.

"5. For challengers at the polls at elections.

"6. For copying and classification of polling lists.

"7. For making canvasses of voters.

"8. For postage, telegraph, telephone or other public messenger service.

"9. For clerk hire at the headquarters or office of such committee.

"10. For conveying infirm or disabled voters to and from the polls."

In 1896, Utah and Ohio were added to the rapidly growing list of States that had adopted more or less satisfactory corrupt

practices acts. The Utah act (Laws 1896, Chap. 56) merely required that candidates and committees report their election expenditures.

The Ohio law (Laws of 1896, p. 123) was known as the Garfield Corrupt Practices Act. It provided that the candidate's expenditures should be limited to $100 for five thousand voters or less, but should not exceed $650 in any case. Its provisions were also applicable to candidates before conventions or primaries, as well as before elections. Political committees were defined, and were required to have a treasurer, who, as well as every person receiving or disbursing money aggregating more than $20, was required to keep detailed accounts, a statement of which, including receipts and expenditures, must be filed with the county clerk. The office of a successful candidate found guilty of violation of the act could be declared vacant at any time during the incumbency of the offending person. The chief defect in this law was that it contained no definition of legitimate or illegitimate expenses. It was especially elaborate, containing several novel features, and its repeal in 1902 (Laws of Ohio, p. 77) may be regarded as the most important of the few reverses which the movement for the general adoption of corrupt practices acts has yet suffered. The only State to pass such a law in 1897 was Wisconsin (Laws of 1897, Chap. 358). This act defined offences against the suffrage, required reports of expenditures by candidates and committees, and restricted the purposes of such expenditures.

A very important innovation, which was adopted in each of the States of Tennessee, Florida and Nebraska in 1897, independently of other provisions relating to corrupt practices, was the absolute prohibition of contributions by corporations to parties or candidates.

In 1897 (Laws of 1897, Chap. 185), the provision of the North Carolina Corrupt Practices Act for reporting expenses was repealed.

In 1898, no new measures concerning elections, of substantial importance, were passed; legislation in that respect being limited to minor details or the codification of existing measures.

In 1899, Nebraska perfected its law of 1897 and was added to the list of States adopting corrupt practices acts (Laws of 1899, Chap. 29), but Nevada repealed its law in that year.

In 1903, corrupt practices laws were passed in Vermont and Virginia. The latter statute (Sec. 145a, Code, 1904) prohibits the expenditure of money in any election, primary or nominating convention, for purposes other than of printing or advertising in newspapers, or in securing suitable halls for public speaking. It requires every person who shall be a candidate before any caucus or convention, or at any primary or other election, to file a statement in writing, "setting forth in detail all sums of money contributed, disbursed, expended or promised by him, and to the best of his knowledge and belief by any person or persons in his behalf . . . showing the dates when and the persons to whom, and the purposes for which, all such sums were paid, expended or promised."

It is further provided that, in case of a violation of the law, the election of the offending candidate shall be void, unless, contest being made, it appears that the contestant is entitled to the office. No person shall enter upon the duties of any elective office until the required statement shall have been filed.

The passage of laws insuring publicity in connection with expenditures in elections was strongly recommended in the last annual message of the Governor of West Virginia.

It appears, therefore, that at least fifteen States have adopted corrupt practices acts, and that in several States contributions by corporations to political campaign funds are prohibited. The first corrupt practices act requiring publicity of candidates' expenditures was passed in 1890, and in 1897 corporations were for the first time prohibited from making campaign contributions; so the development of the law on this subject must be considered exceptionally rapid and satisfactory. It seems probable that in their operations such laws, by curtailing the amounts expended in campaigns, have proved obnoxious to a certain type of professional politicians. In the few cases where they have been repealed, interests adversely affected by them were enabled to take advantage of temporary and purely local conditions, in overruling a comparatively unorganized public sentiment.

At the time of the repeal of the Ohio (Garfield) law, Mr. James R. Garfield, its author, said he had hoped the Legislature would amend rather than repeal it. A few of its provisions were unnecessary and could easily have been cut out of the bill. An amendment favored by Mr. Garfield had been prepared, but it

was defeated. Even township officers elected without the expenditure of money were compelled to make statements; these and other slight defects in the law encouraged a determined effort on the part of certain politicians to discredit its operations. In Springfield, the Mayor was ousted from office on account of the operation of its provisions, and a Probate Judge lost his office. Mr. Garfield believed that "it put a check upon the wholesale spending of money in campaigns." It was an excellent law and should have been continued in an amended form. It was plainly constitutional and had been thoroughly tested in every point by the Supreme Court of the State.

The inception, the development, the retarding the progress and effect of these laws resemble closely the circumstances and the beneficial results attending the ultimate triumph of the Civil Service laws.

The English Corrupt and Illegal Practice Prevention Act (46 and 47 Victoria, ch. 51) has influenced the course of legislation in this country, embodying in substance, first, a strict limitation on the amount which can be expended in furtherance of the election of a Member of Parliament; second, the manner in which such funds may be expended; and, third, publicity as to the sources and disbursements of the funds so employed.

A candidate may act as his own election agent, but the almost universal practice is to appoint some one, usually a solicitor, and often a non-resident of the borough for which the candidate is standing, to assume entire charge of the expenditures.

Upon the election agent is reposed the responsibility of the appointment of every polling agent, clerk and messenger employed on behalf of the candidate at an election, and the hiring of every committee-room used in the campaign.

The Act further provides:

"28.—Except as permitted by or in pursuance of this act, no payment . . . shall be made by a candidate at an election or by any agent on behalf of the candidate *or by any other person at any time, whether before, during or after such election*, in respect of any expenses incurred on account of or in respect of the conduct or management of such election otherwise than by or through the election agent . . . and all money provided by any person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether in gift, loan, advance or deposit, shall be paid to the candidate or his election agent and not otherwise."

Every payment made by an election agent, or a sub-agent, must, except where less than forty shillings, be vouched for by a bill stating the particulars and by a receipt.

Another instance of the drastic nature of the Act is the prohibition against treating, or the giving of any entertainment to voters, during the period of the canvass, it being provided, Chap. 41, Sec. 1:

"(1) *Any person* who corruptly

By himself By any other person	either before, during or after an election	directly, indirectly,	gives, provides, pays wholly or in part the expense of giving or providing	meat, drink, entertainment, provision	to or for any person,

for the purpose of influencing any vote, or

"On account of such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election shall be guilty of treating,"

which, as above defined, is made a corrupt practice within the meaning of the act.

Contributions for charitable purposes subsequent to the public announcement of the candidate's intention to stand for a borough, is also discouraged by the operation of the act.

The act limits the personal expenses of candidates to 100 pounds, of which a statement must be made to the agent. It prohibits any payment for the hiring of horses, carriages or for railway fares, or to an elector for the use of any house, land, building or premises for the exhibition of any address, bill or notice, or on account of committee-rooms in excess of a stipulated number.

The act limits the number of persons who may be legally employed by a candidate as deputy election agents, polling clerks, messengers, clerks, etc., in proportion to the number of electors in the borough or county for which the candidate stands.

Expenses in respect to miscellaneous matters other than those enumerated in a schedule forming part of the act, may not exceed in the whole the maximum sum of £200. The maximum expenditure in a borough, for all purposes other than personal ex-

penses and sums paid to the returning officer for his charges, is limited in proportion to the number of electors on the register. The maximum of expenditure is £330, in case the number of electors on the register exceeds 2,000, and for every complete 1,000 electors above 2,000 an additional £30. In a county, the maximum expenses, if the number of electors on the register does not exceed 2,000, is £650 in England and Scotland, and £500 in Ireland; if the number of electors exceeds 2,000, the maximum is £710 in England and Scotland, and £540 in Ireland, and an additional £60 in England and Scotland, and £40 in Ireland, for every complete 1,000 electors above 2,000.

Clause F of Sec. 33 provides that a statement must be made of all subscriptions received by the election agent for any purpose, on account of the conduct or management of the election, with a statement of the name of every person from whom the same has been received.

This clause insures the fullest publicity in respect to any contributions made to a Parliamentary campaign fund.

V.

The legislation of so many States, thus reviewed, has heretofore possessed local rather than national significance, and has followed a recognition of evils peculiar to those States. Conditions prevailing in Presidential campaigns have now made the problem national.

The Constitution provides that each State shall appoint Presidential electors in such manner as its Legislature shall direct. While, therefore, in theory it may be contended that the choice of Presidential electors is a State function, elections at which they are chosen are held at the same time as the Congressional elections, have become Federal in character and, as such, the subject of Federal regulation. The express powers of Congress to effect such regulations are derived from the fourth section of the first article of the Constitution:

"The times, places, and manner of holding all elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations except as to the place of choosing Senators."

While the authority of the State and national governments is concurrent, that of the latter is paramount. Congress can adopt

any means, qualification or regulation which the States have enacted, including provisions designed to insure the publicity and limitation of expenditures in connection with Congressional elections.

It cannot be doubted that Congress may assume the entire control of the election of representatives and this power, as declared by the Supreme Court, "necessarily involves the appointment . . . of the officers for holding the election . . . and every other matter relating to this subject" (100 U. S. 396); and, as declared by Mr. Justice Miller, "Congress can by law protect the act of voting, the place where it is done, and the man who votes from personal violence or intimidation, *and the election itself from corruption*" (110 U. S., 661).

It is, moreover, equally clear that Congress has complete and paramount jurisdiction over the choice of Presidential electors, provided that Congressional representatives are also chosen at the same election.

Referring to the power of Congress to regulate the election of its members, the Supreme Court said:

> "If this be so, and it is not doubted, are such powers annulled because an election for State officers is held at the same time and place? Is it any less important that the election of members of Congress should be the free choice of all the electors because State officers are to be elected at the same time?"—110 U. S., 661.

It has been held by the Supreme Court (127 U. S., 731) that it is not necessary to prove that an act, relating to the conduct of an election at which a Congressman is chosen, was committed with "the specific intent or design to influence the Congressional election." The Supreme Court further held that "the object to be attained by these acts of Congress is to guard against the *danger,* and the *opportunity,*" of committing objectionable acts "as well as against direct and intentional frauds upon the vote for members of that body," and that the power of Congress can be invoked whenever such election is "*exposed* or *subjected* . . . to the *opportunity* . . . or to the *danger*" of such acts "as may affect that election, *whether they actually do so or not.*"

It would not therefore be possible to evade the operation of a Federal statute prohibiting the secret contribution or expenditure of money in connection with any election at which a Congressman may be chosen, on the pretence that there was an absence of

intent to influence the Congressional election, or that the contributions or expenditures were directed solely to secure the election of Presidential electors or State officers.

It is sufficient that the prohibited act should create a "danger" or "opportunity" of improperly influencing the election. As declared by the Supreme Court in the case last quoted:

"There are many instances when an act may be criminal in its character without there being a criminal intent. . . .

"The case before us is eminently one of this character. Crimes against the ballot have become so numerous and so serious that the attention of all legislative bodies has been turned with anxious solicitude to the means of preventing them, and to the object of securing purity in elections and accuracy in the returns by which their result is ascertained. The acts of Congress and of the State of Indiana now under consideration are of this class, . . . and to say that the . . . want of an intention on the part of persons who are alleged to have acted feloniously in the violation of those laws, excuses them because they did not intend to violate their provisions *as to all the persons voted for at such an election*, although they might have intended to affect the result as regards some of them, is manifestly contrary to common sense and is not supported by any sound authority,"—127 U. S., 755.

An indictment under the Federal statutes for illegal voting and for bribery has been upheld, although it was not charged that the ballot cast contained the name of a person voted for for representative in Congress, *nor that the bribe was given with the intent to influence the voter in respect to the Congressional election:*

"When Congressional and local elections are held at the same time and places, and mixed ballots are cast, as is the practice in Indiana, it is a misleading refinement, I think, to say that there are two elections —a national and a State—held at the same time. It is one election, for the conduct of which the two sovereignties have a common concern, though interested in several results (*Ex parte* Siebold, 100 U. S., 371); and Congress having unquestionably the paramount, and, when it sees fit to assert it, the exclusive, power to regulate such elections, must, in the first instance at least, determine for itself what regulations are necessary or expedient; and it is not the province of the courts to restrict or annul any enactment on the subject, on the ground that it is not within the powers of Congress, unless it be demonstrable that *in no event, and under no circumstances*, the offence defined, and coming within the letter and spirit of the enactment, could affect the election for representatives in Congress. . . . It is manifest that regulations and restrictions which permitted inquiry, whether the offender in such re-

spects intended to intimidate or influence the conduct of voters in respect to one office or another, would be inefficient, because easily evaded. Once concede that the indictment for bribery of a voter, in order to be good under the Federal statute, must charge an attempt to affect the Congressional election, and the speedy result will be, not less bribery in respect to that election, but more likely a large increase, contrived and conducted in such way as to prevent proof of the real purpose, by pretences of different purposes."—(29 Fed. Rep., 898-9.)

The purport of legislation requiring publicity in respect to campaign expenditures is to secure the freedom of elections from improper influences. To this end, the indirect restraints of the Corrupt Practices Acts are more effectual than the direct prohibitions and penalties of statutes, Federal or State, penalizing bribery.

The adequacy of existing laws to punish one proved guilty of bribery may be admitted as a general proposition. That specific legislation of this nature has not proved effective to protect the free exercise of the franchise from the undue influence of campaign expenditures must also be admitted. It is a crime which is not readily susceptible of direct proof. The remedy sought in the statutes already cited and in the suggested Federal legislation is rather one of prevention by indirection. It is the limitation and regulation of the possible sources and agencies of corruption which is of primary practical importance. The chief inducement to bribery must be removed by throwing safeguards about the present irresponsible use of campaign funds. The chief remedy proposed by such legislation is publicity, not purely police or penal regulation of the grosser forms of bribery.

It can not be successfully contended that Congress has not constitutional power to insure, by enforcing publicity, an end which in the exercise of its undoubted authority it has sought to reach by more direct but less effective legislation.

The Supreme Court has declared:

"If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends from violence and corruption. . . .

"If this be so, and it is not doubted, are such powers annulled because an election for State officers is held at the same time and place? Is it any less important that the election of members of Congress should

be the free choice of all the electors, because State officers are to be elected at the same time?

"In a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptations to control these elections by violence and by corruption are a constant source of danger.

"If the government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists, on the other." (110 U. S., p. 661.)

Upon all existing precedent and authority, a Federal statute forbidding the secret expenditure of money to influence an election at which a Congressman is to be chosen, would be valid and effectual to compel publicity in respect to all expenditures tending to influence the election of *any* candidate at such election. This would include Presidential electors. A large number of the States having already required publicity of expenditures by political State committees, Congress may, on such initiative, require of political committees engaged in promoting the election of Presidential and Congressional candidates a similar publicity, such elections being held at the same time.

VI.

Concurrent enactments could be adopted in the several States, in accordance with the encouraging tendency of the legislation of the fifteen States already enumerated.

It is especially incumbent upon the State of New York, having, in 1890, taken the initiative in this form of legislation, to at once supplement its deficient and ineffective law. New York, an important centre of political activity in national campaigns, should place itself in line with the most advanced legislation of other States. Owing to the failure of the New York statute to require any statement from political or campaign committees, it is possible to avoid publicity in respect to expenditures for any amount or for any purposes. If an irresponsible committee and not the candidate can be made the medium of disbursements, evasion of the existing law is invited. Should publicity be required of com-

mittees, under penalty of forfeiture of office and other effective punishments, such as are provided in several States, the New York law would be rendered operative.

VII.

Should publicity of expenditures by political committees have the effect of reducing campaign contributions, political machinery and party efficiency would not be harmed. The reduction would cut off the camp followers, whose slight party affiliations serve no other purpose than to give occasion for utterly useless and extravagant expenditures. A political organization cannot be too perfect to be effective, but managers of national, State and local committees have often experienced the injury caused by the employment of unnecessary campaign funds, absorbing and diverting from their normal and more effective functions the vital energies of political leadership.

Party organizations are essential to party government; their importance and usefulness in our political system should be fully recognized. They can not be maintained without the expenditure needed in legitimate and honest politics, but no popular organization, commanding a sufficient amount of interest among its followers, will suffer permanent disability because of limitations and restraints upon contributions and expenditures. The great denominational religious organizations of this country are supported in great part by small contributions. When political organizations are sustained by the large subscriptions of the few, their activities become paralyzed by the development of a spirit of dependence on the few.

Voters should be informed by unrestricted and general diffusion of facts and arguments pertinent to the issues before the country. The great mass of voters reach their conclusions with little assistance from the instrumentalities toward which campaign expenses are too often directed. Newspapers and periodicals are a more effective educational force than tons of pamphlets usually distributed during elections.

Voters depend upon the great parties to frame issues to command their support, and to nominate properly qualified candidates. If a party organization does not prove equal to this task, it is a matter of small moment that it succeeds in raising large sums, or in perfecting a machine that absorbs and distracts the major

portion of the political activity at the command of the party.

Contributions by corporations should be restricted. The freedom of individuals to contribute according to their means and inclinations to party organizations need not be interfered with by legislation. There is, however, no inherent individual right to secrecy in respect to activities influencing the great court of public opinion, which, as the result of each national election, passes upon the rights and property of all. The turning on of the light cannot be deemed an unconstitutional increase of Federal or State control.

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